



Decision

Matter of: Trataros/Basil, Inc.

File: B-260321

Date: May 30, 1995

John A. Bellucci for the protester.
Carol A. Gray, for Centennial Contractors Enterprises, Inc.,
an interested party.
Michael J. Adams, Esq., and Mary Byers, Esq., Department of
the Army, for the agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest that incumbent's proposal was not selected for
award as a result of one evaluator's alleged bias is denied
where record discloses no evidence of bias and shows that
agency's evaluation of protester's and awardee's proposals
was proper.

2. Where protester's evaluation score is found to be
reasonably based, and protester is not next in line for
award because of another proposal with a higher score and
lower cost than the protester's, it is not an interested
party to challenge award to an offeror with higher
technically scored, higher-priced proposal.

DECISION

Trataros/Basil, Inc. protests the award of a contract to
Centennial Contractors Enterprises, Inc. (CCE) under request
for proposals (RFP) No. DACA51-94-R-0019, issued by the New
York District, U.S. Army Corps of Engineers, for
construction and repair requirements at the U.S. Army
Military Academy, West Point, New York. Trataros/Basil, the
incumbent contractor, contends that it was not awarded the
contract because a member of the evaluation team was biased
against the protester.

We deny the protest.

The RFP contemplated award of an indefinite delivery job
order contract (JOC) for small to medium sized (\$2,500 to
\$300,000) repair and new construction projects at the

Academy for a 1-year base period with two 1-year options. All offers were to be based on a unit-price book which contains some 30,000 pre-priced items (including labor and materials) typically needed to perform these projects. Offerors were to propose a mark-up coefficient which included overhead, profit, and contingencies.

Proposals were to be evaluated on the basis of price and quality, including (in descending order of importance) management, quality control and technical experience factors. The quality criterion was substantially more important than price. The RFP advised that in selecting the best overall proposal, the government would consider the value of each proposal in terms of the quality offered for the price. Price would become more important as quality differences between the proposals decreased.

Ten offers, including those of Trataros/Basil and CCE, were received by the October 3, 1994, closing date. The technical proposals were reviewed by a team of four evaluators, including the current JOC branch chief, who has been responsible for administering the Academy's JOCs since 1989. Under the initial evaluation, CCE received a quality score of 765 points and Trataros/Basil received a score of 642 points out of a possible maximum of 900 points. Their proposals were among the six included in the competitive range. In the final evaluation, CCE's proposal score improved to 895 points, which was the highest score received, and Trataros/Basil's proposal score improved to 667 points. With respect to price, CCE had the fourth lowest coefficient (1.0760), while Trataros/Basil had the third lowest (.9738).

In making the award selection, the contracting officer eliminated two of the competitive range proposals because their quality scores were lower than CCE's and their coefficients were higher. While Trataros/Basil's coefficient was lower than CCE's, the contracting officer concluded that its significantly lower quality score meant that the protester's proposal presented no advantage to the government. Lower quality work and final products, coupled with the additional burdens associated with Trataros/Basil's management deficiencies, were considered to negate any price savings. The contracting officer also weighed the difference between CCE's proposal and another offeror's proposal which was scored 30 points lower than CCE's in quality, but had a lower price coefficient than either CCE or Trataros/Basil had proposed. Based on overall quality, the contracting officer concluded that the other offeror's proposal would not ultimately result in lower costs to the government. Accordingly, he awarded the contract to CCE on February 1, 1995. This protest followed.

Trataros/Basil contends that the JOC branch chief was biased against it. As support, the protester has submitted a notarized statement from one of its employees stating that the branch chief twice said "I will be on the reviewing committee for the next JOC contract and I will not make the same mistake of selecting Trataros/Basil." The same employee added that the branch chief's attitude would be "hostile" whenever he "did not get his way and he had to pay for extra work" that he "did not agree with," or he "would refuse a valid time extension." The protester also submitted a witnessed statement from one of its subcontractors who alleged that the branch chief once said "that he could not wait to get rid of Trataros/Basil on the JOC contract." Trataros/Basil contends that the branch chief's bias, as evidenced by these statements, resulted in the protester's proposal receiving an inappropriately low quality score.¹

Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of mere inference or supposition. See Lancaster & Co., B-254418, Dec. 14, 1993, 93-2 CPD ¶ 319. Where, as here, a protester alleges bias on the part of a procurement official, our focus is on whether the official exerted improper influence in the procurement on behalf of the awardee or against the protester. E.J. Richardson Assocs., Inc., B-250951, Mar. 1, 1993, 93-1 CPD ¶ 185. From our review of the record, we find no evidence of bias or that the branch chief exerted any improper influence on the evaluation.

In two sworn statements, the branch chief explains that he treated Trataros/Basil fairly and without bias both in the evaluation of the contract and in the administration of the protester's JOC contract. The branch chief denies having any personal agenda to get rid of Trataros/Basil and denies ever telling anyone that he did not want to select the protester. He also denies ever meeting the subcontractor who submitted the witnessed statement. He notes that he is aware that Trataros/Basil was assessed \$1,200 in liquidated damages on the delivery order job where he allegedly spoke with the subcontractor.

With regard to the evaluation, the branch chief explains that each member of the evaluation team had an equal role in the evaluation of proposals. As part of his

¹Trataros/Basil also alleged that the branch chief was the chairman of the evaluation committee and hand-picked the other evaluators. The agency explains that the contracting officer selected the evaluators and that all had equal standing; there was no chairman selected.

responsibilities, he read each proposal and assigned points to each evaluation factor. He then participated in discussions with the other members of the committee to establish a consensus score for each proposal. He also evaluated the BAFOs and helped establish a consensus score for each BAFO. The branch chief's statements are verified by the agency's district counsel who, serving as an advisor to the team, observed the evaluation of the proposals. According to the counsel, the branch chief did not unduly influence the committee and the evaluation involved discussions among all team members of the strengths and weaknesses of the protester's proposal.

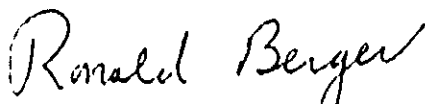
The evaluation record supports the representations of the branch chief and district counsel. In general, the branch chief's scores for Trataros/Basil were in line with those of the other three evaluators. For example, in 11 of the 14 subfactors, the branch chief's score for Trataros/Basil was equal to or higher than the majority of the other evaluators. The branch chief's score for Trataros/Basil on each of the three factors was the second highest, and he gave the protester a perfect score on the third factor, technical experience. Further, his initial score for the protester's proposal, 635 total points, was very close to the average of the other three evaluators, 640 points, and the consensus score of 642 points. In the BAFO evaluation, the protester's score improved by 25 points.

In view of the evaluation record and the observations of the district counsel, we find the statements of the branch chief more credible than those submitted by the protester. Even if we were to assume that the branch chief had expressed "hostility" towards the protester and made the alleged statements, they appear to be essentially expressions of dissatisfaction with the firm's performance on the predecessor contract and not evidence of improper bias. See Prose, Inc., B-259016, Feb. 28, 1995, 95-1 CPD ¶ 123. In sum, there is no evidence of bias in the record before us and we have no basis to object to the evaluation results.

Trataros/Basil also protests the agency's decision to award to CCE because its higher proposed coefficient will cost the government more than if it awarded the contract to the protester. Trataros/Basil is not an interested party to raise this issue. The bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988) provide that only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1995). A protester is not an interested party where it would not be in line for contract award were its

protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Here, as explained above, there is no basis to object to the evaluation as performed by the agency. That evaluation resulted in another offeror's proposal being scored higher in quality than Trataros/Basil's and that offeror proposed a lower price coefficient than did the protester. Since the protester has not challenged the eligibility for award of this intervening offeror, who would precede the protester in eligibility under the solicitation, the protester lacks the direct economic interest required to maintain a protest on this ground.

The protest is denied.


for Robert P. Murphy
General Counsel